IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 4170 OF 2006.

M/s Eastern Overseas. .. Petitioner.

V/s.

Shri Chandu K.Shinde & ors. ... Respondents.

Shri S.S. Pathak for the petitioner.

Shri N.R. Kolte for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 14.9..2006.

P.C. :

. This petition is directed against the judgment and order dated 7.2.2006 passed in Revision Application No. 59/2003, arising out of Complaint (ULP) No.484/1999, passed by the Presiding Officer, Industrial Court, Mumbai, whereby revision application filed by the employer came to be dismissed and order of the 11th Labour Court dated 24.2.2003 in Complaint (ULP) No. 484/1999 came to be confirmed. The review petition filed by the employer also came to be rejected by order dated 25.4.2006 by the Industrial Court, Mumbai. This order is also a subject matter of challenge of this petition.

Facts and Submissions:

2. The petitioner claims to be a proprietary

concern carrying on business of exporting artificial jewellery and scarves.

3. Petitioner has 15 employees in its establishment. Respondent No.1 was one of such employees, employed as Driver since June 1998. The case of the employer is that the respondent No.1 met with an accident due to his negligence and thereafter on his own he stopped coming on duty. It is further alleged that respondent No.1 thereafter filed Complaint (ULP) No. 484 of 1999 on 5.8.1999, contending that he was wrongfully terminated from service without following due process of law.

4. The petitioner claims to have filed affidavit dated 18.11.1999 and took a stand that services of respondent No.1 were never terminated by the employer and that he on his own did not report for duty.

5. It is also a stand taken by the petitioner that during the pendency of the complaint, services of the petitioner were retrenched since his services were no longer required by the petitioner and that the management found it difficult to bear financial burden of salary of the Driver and that the petitioner himself is driving his vehicle. It was, thus, contended before the trial Court that

retrenchment being a fresh cause of action, complaint filed by the workman was not maintainable. Respondent No.1, therefore, ought to have filed fresh complaint based on fresh cause of action to challenge retrenchment.

6. The aforesaid submissions were reiterated before the Industrial Court. Before this Court also same submissions were reiterated to challenge the impugned order and reliance is placed on the following decisions: (1) Prav Plast Pvt.Ltd. vs. Kaluram A.Chaoudhari , 1991 II 995; (2) Rachel Gunther vs. Mahadev R. Mishra ; (3) Raju Sankar Poojary vs. Chembur Warehouse Co. 2003 CLR 890 and (4) Kala Silk Factory vs. Phankoo Bakas Yadav & ors.

Consideration:

7. Having heard rival parties , at the outset, it is to be pointed that both the Courts below concurrently held that action of the petitioner-employer constitutes an unfair labour practice It appears that there was accident, may be in the opinion of the employer due to negligent driving of the respondent No.1, and this appears to have resulted in oral termination of services of the driver.

8. This termination appears to have given rise to the complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.('the Act')

9. A shrewd stand taken by the petitioner-employer contending services of the respondent No.1-employee were never terminated by him and he himself has stopped reporting on duty. If services of the respondent were not terminated, then there was no reason for the workman not to report on duty and to approach the Labour Court. This shows that the workman-Driver is keen to serve his employer -the petitioner herein. There was no reason for him to abandon his services. If his services were not terminated; the petitioner could have approached the Labour Court to seek specific directions against the workman to call upon him to report for duty. By-passing this simple mode, petitioner resorted to the action of alleged retrenchment of the workman presumably, to get red of him.

10. Apart from the above, , it is difficult to digest that by retrenching the respondent, financial burden of the firm is reduced by the employer. It is not possible to accept that the Driver's post has become surplus in the establishment. Out of 15

workmen, petitioner chose to drive the Driver out so as to make financial savings. This is difficult to appreciate.

11. The services of an employee or workman whose services have already been terminated cannot again be retrenched unless he is taken in service. Whether respondent's services were terminated or not was a subject matter of trial in the complaint. It was expected on the part of the petitioner-employer to obtain findings in his favour before reaching unilateral conclusion that the termination was non est. The action of the petitioner constitutes an unfair labour practice. In the wake of evidence on record, this is not a fit case where this petition should be entertained. The view taken by the Courts below is a reasonable and possible view in the facts and circumstances of the case. None of the case law cited is relevant for the purpose of this petition though principles laid down therein are recognised.

12. In the result, petition is dismissed in limine with no order as to costs.

(V.C.DAGA,J.)